

## **Title 18. Franchise Tax Board**

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As required by Section 11346.4 of the Government Code, this is notice that a public hearing has been scheduled to be held at 9:30 a.m., on August 6, 1999, in Room 1040 at 9645 Butterfield Way, Sacramento, California, to consider the adoption of Sections 19041 and 19044 in Title 18 of the California Code of Regulations pertaining to the filing of a protest and the conduct of an oral hearing on a protest. The hearing will be conducted by an employee of the Franchise Tax Board and a report will be submitted to the three-member Franchise Tax Board for its consideration. Government Code Section 15702(b) provides for consideration by the three-member Board of any proposed regulatory action if any person makes such a request. If a request is received, a hearing will be held by the three-member Board. Interested persons are invited to present comments, written or oral, concerning the proposed regulatory action. It is requested, but not required, that persons who make oral comments at the hearing also submit a written copy of their comments at the hearing.

### **WRITTEN COMMENT PERIOD:**

Written comments will be accepted until 5:00 p.m., August 6, 1999. All relevant matters presented will be considered before the proposed regulatory action is taken. Comments should be submitted to the agency officer named below.

### **AUTHORITY & REFERENCE:**

Section 19503 of the Revenue and Taxation Code authorizes the Franchise Tax Board to prescribe regulations necessary for the enforcement of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), Part 10.7 (commencing with Section 21001) and Part 11 (commencing with Section 23001) of the Revenue and Taxation Code. The proposed regulatory action interprets, implements, and makes specific Sections 19041 and 19044 of the Revenue and Taxation Code.

### **INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW:**

#### **Proposed Regulation Section 19041**

Section 19041 of the Revenue and Taxation Code allows a taxpayer to file a protest with respect to the proposed assessment of additional tax by the department. Proposed Regulation Section 19041 describes the manner in which a protest is to be filed and the information which should be included in the protest.

Pursuant to Section 19041 of the Revenue and Taxation Code, a protest must be filed within 60 days of the mailing of a Notice of Proposed Assessment. Subsection (b) of the proposed regulation describes how the 60-day period will be calculated.

Subsection (c) provides that a protest shall be filed by mail.

Subsection (d) requires the protest to be in writing. It sets forth the contents which should be included in the protest. It states that a request for an oral hearing must be made in the protest if an oral hearing is desired. The subsection states that the protest must be signed. The subsection sets forth the requirement that the protest include a statement of grounds and a listing of any legal authorities relied upon by the taxpayer.

Subsection (e) of the proposed regulation sets forth the rules with respect to the grounds upon which a protest can be made. There are no limitations on grounds in an original protest. After the original protest has been filed, new grounds cannot be raised except in certain circumstances. What constitutes a new ground is defined. The circumstances under which new grounds will be accepted are described. The department will be liberal in allowing new grounds to be raised, consistent with the timely and efficient resolution of the protest. The subsection provides that the assertion of new grounds can not give rise to a claim for refund in certain circumstances.

Subsection (f) describes when a protest can be perfected, either at the taxpayer's initiation, or in response to a request by the department. It also sets forth the consequences of a failure to perfect a protest.

Subsection (g) sets forth the department's right to request additional information, a taxpayer's duty to respond to a request, the time in which a taxpayer can make a response, and the possible consequences of a failure to respond.

Subsection (h) describes how the taxpayer will be advised of the determination that has been made with respect to a protest and the right to appeal from a determination on a protest.

### **Proposed Regulation Section 19044**

Section 19044 of the Revenue and Taxation Code allows a taxpayer to request an oral hearing with respect to a protest. The proposed regulation describes the nature of the hearing, when and where it will be held, and the manner in which the hearing will be conducted.

Subsection (b) of the proposed regulation describes how an oral hearing is to be requested and provides that the department has the discretion to grant an oral hearing if not requested in the original protest. The discretion to grant an oral hearing will be liberally applied consistent with the timely and efficient resolution of the protest.

Subsection (c) of the proposed regulation states where an oral hearing will be held.

Subsection (d) of the proposed regulation states when an oral hearing will be scheduled or rescheduled.

Subsection (e) of the proposed regulation describes the notice of hearing.

Subsection (f) of the proposed regulation describes the designation of the hearing officer.

Subsection (g) of the proposed regulation sets forth the taxpayer's right to representation.

Subsection (h) of the proposed regulation describes the manner in which the hearing will be conducted including the presentation of both documentary evidence and oral testimony and possible limitation on the number of representatives who may participate in the hearing. It describes the manner in which a taxpayer will be advised of the need to submit additional information and the consequences of the failure to supply the requested information. The subsection also describes the manner in which the taxpayer will be notified of the hearing officer's determination.

Subsection (j) describes the consequences of the failure to attend an oral hearing or of failing to provide proper notification of the inability to attend a hearing.

#### DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed under Part 7, commencing with Government Code Section 17500, of Division 4: None.

Other non-discretionary cost or savings imposed upon local agencies: None.

Cost or savings in federal funding to the state: None.

Adverse economic impact on business including the ability of California businesses to compete with businesses in other states: None.

Cost to directly affected private persons/businesses potential: None

Significant effect on the creation or elimination of jobs in the state: None.

Significant effect on the creation of new businesses or elimination of existing businesses within the state: None.

Significant effect on the expansion of businesses currently doing business within the state: None.

Effect on small business: The regulation effects small businesses in the same manner it effects individuals and other businesses.

Significant effect on housing costs: None.

#### CONSIDERATION OF ALTERNATIVES:

In accordance with Government Code Section 11346.5(a)(12), the Board must determine that no alternative considered by it would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

The department has not found it necessary to adopt regulations with respect to these two code sections in the past, and instead, relied upon information sheets and forms to describe a taxpayer's rights and the nature of Protest hearings and the manner in which they would be conducted. In August of 1998, the Office of Administrative Law held that these information sheets and/or forms were underground regulations. Accordingly, the department has determined that there is no alternative to the adoption of these proposed regulations to provide appropriate information to taxpayers regarding protests and oral protest hearings.

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS:

An initial statement of reasons has been prepared setting forth the facts upon which the proposed regulatory action is based. The statement includes the specific purpose of the proposed regulatory action and the factual basis for determining that the proposed regulatory action is necessary.

The Franchise Tax Board has determined that it is not feasible to draft the text of the proposed regulations in plain English due to the technical nature of the regulations. However, a non-controlling plain English summary of the text of the proposed regulations, as well as the initial statement of reasons and all information upon which the proposed regulatory action is based, as well as the express terms of the proposed action, are available upon request from the agency officer named below.

The express terms of the proposed regulatory action, as well as the initial statement of reasons and all information upon which the proposal is based, are available upon request from the agency officer named below.

#### CHANGE OR MODIFICATION OF ACTIONS:

The proposed regulatory action may be adopted by the three-member Franchise Tax Board after consideration of any comments received during the comment period.

The regulations may also be adopted with modifications if the changes are nonsubstantive, or the resulting regulations are sufficiently related to the text made available to the public so that the public was adequately placed on notice that the regulation as modified could result from that originally proposed. The text of the regulations as modified will be made available to the public at least 15 days prior to the date on which the regulation is adopted. Requests for copies of any modified regulations should be sent to the attention of the agency officer named below.

#### ADDITIONAL COMMENTS:

If you plan on attending or making an oral presentation at the regulation hearing, please contact the agency officer named below.

The hearing room is accessible to persons with physical disabilities. Any person planning to attend the hearing who is in need of a language interpreter, including sign language, should contact the officer named below at least two weeks prior to the hearing so that the services of an interpreter may be arranged.

**CONTACT:**

All inquiries concerning this notice or the hearing should be directed to Colleen Berwick at the Franchise Tax Board Legal Branch, P.O. Box 1720, Rancho Cordova, CA 95741-1720; Tel.: (916) 845-3306; Fax: (916) 845-3648; E-Mail: [colleen\\_berwick@ftb.ca.gov](mailto:colleen_berwick@ftb.ca.gov). The regulation and initial statement of reasons are also available at the Franchise Tax Board's website at [www.ftb.ca.gov](http://www.ftb.ca.gov).